

1 Richard M. Heimann (State Bar No. 63607)
2 Kelly M. Dermody (State Bar No. 171716)
3 Eric B. Fastiff (State Bar No. 182260)
4 Brendan P. Glackin (State Bar No. 199643)
5 Dean M. Harvey (State Bar No. 250298)
6 Anne B. Shaver (State Bar No. 255928)
7 Lisa J. Cisneros (State Bar No. 251473)
8 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
9 275 Battery Street, 29th Floor
10 San Francisco, California 94111-3339
11 Telephone: 415.956.1000
12 Facsimile: 415.956.1008

7 Joseph R. Saveri (State Bar No. 130064)
8 Lisa J. Lebove (State Bar No. 186705)
9 James G. Dallal (State Bar No. 277826)
10 JOSEPH SAVERI LAW FIRM, INC.
11 255 California, Suite 450
12 San Francisco, California 94111
13 Telephone: 415.500.6800
14 Facsimile: 415.500.6803

12 || *Co-Lead Counsel for Plaintiff Class*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

18 IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

19 THIS DOCUMENT RELATES TO:

All Actions

Master Docket No. 11-CV-2509-LHK

**PLAINTIFFS' ADMINISTRATIVE
MOTION TO FILE UNDER SEAL
PORTIONS OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

Judge: Honorable Lucy H. Koh

Pursuant to Civil Local Rule 7-11 and 79-5, Plaintiffs respectfully request an order from the Court authorizing the filing under seal of the items identified below:

(1) A portion of Plaintiffs' Motion for Preliminary Approval of Class Settlement

Agreement, specifically a figure on line 24 of page 2 and line 13 of page 13;

- (2) Exhibit D and Attachment 1 to Plaintiffs' Settlement Agreement with Intuit; and
- (3) Exhibit E and Attachment 1 to Plaintiffs' Settlement Agreement with Lucasfilm and Pixar.

4 Plaintiffs request, pursuant to Local Rule 79-5(d), the Court’s approval to file under seal a
5 portion of Plaintiffs’ Motion for Preliminary Approval, specifically a figure on line 24 of page 2
6 and line 13 of page 13, as well as Exhibit D of Plaintiffs’ Settlement Agreement with Intuit and
7 Exhibit E of Plaintiffs’ Settlement Agreement with Lucasfilm and Pixar to protect information
8 that Defendants have designated “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’
9 EYES ONLY” under the Stipulated Protective Order (Modified by the Court) (Dkt. No. 107).
10 This information was not designated as confidential by Plaintiffs. Plaintiffs take no position on
11 whether the designated documents satisfy the requirements for sealing, and specifically reserve
12 the right to challenge any “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES
13 ONLY” designation under the Stipulated Protective Order (Modified by the Court) (Dkt. No.
14 107), as well as the sealability of these documents under Civil Local Rule 79-5.

15 Plaintiffs also seek to file under seal, pursuant to Local Rule 79-5(c), Attachments 1 to
16 Plaintiffs' Settlement Agreements with Intuit, and Lucasfilm and Pixar. Plaintiffs, Intuit,
17 Lucasfilm, and Pixar intend for the provisions to remain confidential and Plaintiffs set forth their
18 reasons in the attached declaration of Dean M. Harvey.

19 Pursuant to Local Rule 79-5 and this Court's Standing Order Regarding Motion to File
20 Under Seal, the proposed redacted versions of Plaintiffs' Motion for Preliminary Approval and
21 both settlement agreements have been attached as Exhibits 1, 2 and 3 of this motion, respectively,
22 and e-filed publicly. Pursuant to this Court's January 11, 2013 Order (Dkt. 269), Plaintiffs'
23 Motion for Preliminary Approval with the proposed redaction highlighted in yellow have been
24 attached hereto as Exhibit 4. Unredacted versions of both settlement agreements have been
25 attached as Exhibits 5 and 6. Pursuant to Local Rule 79-5(b)(3) and (c)(3), the proposed redacted
26 versions of Plaintiffs' Motion and settlement agreements, and the unredacted version of the same,
27 have been served on Defendants and will be lodged with the Court.

1 **I. LEGAL STANDARD**

2 Rule 26(c) of the Federal Rules of Civil Procedure provides broad discretion for a trial court
 3 to permit sealing of court documents for, *inter alia*, the protection of “a trade secret or other
 4 confidential research, development, or commercial information.” Fed. R. Civ. P. 26(c)(1)(G). In the
 5 Ninth Circuit two standards govern requests to seal documents: “compelling reasons” and “good
 6 cause.” *Pintos v. Pac. Creditors Ass'n*, 565 F.3d 1106, 1115 (9th Cir. 2009), amended, 605 F.3d
 7 665, Nos. 04-17485, 04-17558, 2010 U.S. App. LEXIS 10530 (9th Cir. May 21, 2010).
 8 Documents attached to dispositive motions are governed by the compelling reasons standard. *See*
 9 *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1136 (9th Cir. 2003). A “‘particularized
 10 showing’ under the ‘good cause’ standard of Rule 26(c) will ‘suffice[] to warrant preserving the
 11 secrecy of sealed discovery material attached to nondispositive motions.’” *Id.* at 1180. *See also*
 12 *Pintos*, 565 F.3d at 1115 (“In light of the weaker public interest in nondispositive materials, we apply
 13 the ‘good cause’ standard when parties wish to keep them under seal.”).

14 This Court has previously held that the good cause standard applies to requests to seal
 15 confidential terms of a settlement agreement “only tangentially related to the merits of the underlying
 16 cause of action.” *Prosurance Group, Inc. v. Liberty Mut. Group, Inc.*, Case No. 10-cv-02600-LHK,
 17 2011 U.S. Dist. LEXIS 22365, *2-3 (N.D. Cal. Feb. 18, 2011) (citing *Phillips ex rel. Estate of Bryd v.*
 18 *General Motors Corp.*, 307 F.3d 1206, 1212 (9th Cir. 2002)).

19 **II. ARGUMENT**

20 **A. Redactions from Plaintiffs' Motion for Preliminary Approval and Exhibits D**
 21 **and E to Intuit and Pixar/Lucasfilm Settlement Agreements, Respectively**

22 Although Plaintiffs' request is narrowly tailored to include only the information that may
 23 require confidentiality, Defendants must show good cause for sealing the documents they have
 24 placed a confidentiality designation upon by submitting a declaration and proposed order within
 25 seven days after the lodging of the designated documents. *See* Civil Local Rule 79-5(d).

26 **B. Attachments 1 to the Settlement Agreements**

27 Pursuant to Local Rule 79-5(c), Plaintiffs request to file under seal a limited portion of
 28 their settlement agreements with Intuit and Pixar/Lucasfilm, specifically the provisions contained

1 in Attachment 1 to each agreement. These provisions do not concern any term of the settlement
 2 agreements dictating the type or amount of relief available to class members, if the settlement
 3 agreements are approved and finalized. Rather, they set forth circumstances in which the
 4 settlement agreements will be terminated or will not become effective. *See Pixar/Lucasfilm*
 5 *Settlement Agreement*, Part VIII.A.; *Intuit Settlement Agreement*, Part VIII.A; Decl. of Dean M.
 6 Harvey, attached hereto. The provisions have no bearing on the reasonableness, fairness or
 7 adequacy of the Settlement.

8 The parties to the Agreement have an interest in maintaining the confidentiality of these
 9 provisions. *Id.* The revelation of these provisions may encourage professional objectors to
 10 thwart the settlement with no clear benefit to class members. Courts throughout the country have
 11 recognized the “cottage industry” of professional objectors known for bad faith and vexatious
 12 conduct. *See e.g., Koz v. Kellog Co.*, 2013 U.S. Dist. LEXIS 129205, *11 n.2 (C.D. Cal.
 13 September 10, 2013); *In re Oil Spill by Oil Rig Deepwater Horizon*, 2013 U.S. Dist. LEXIS 4595,
 14 at *48 n.40 (E.D. La. Jan. 11, 2013). *See also, In re Hydroxycut Mktg. & Sales Practices Litig. v.*
 15 *Iovate Health Scis. Group*, Case No. 09-md-2087, 2013 U.S. Dist. LEXIS 133413, *71 n.3 (S.D.
 16 Cal. 2013) (“[P]rofessional objectors can levy what is effectively a tax on class action
 17 settlements, a tax that has no benefit to anyone other than to the objectors. Literally nothing is
 18 gained from the cost: Settlements are not restructured and the class, on whose benefit the appeal
 19 is purportedly raised, gains nothing.”).

20 This interest in confidentiality outweighs the public interest in its disclosure. “Voluntary
 21 conciliation and settlement are the preferred means of dispute resolution in complex class action
 22 litigation.” *Smith v. CRST Van Expedited, Inc.*, 2013 U.S. Dist. LEXIS 6049, 2013 WL 163293,
 23 at *2 (S.D. Cal. Jan. 14, 2013) (citing *Officers for Justice v. Civil Service Com'n of City and*
 24 *County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)). The requested redaction of the
 25 information is narrowly tailored, and there are no less restrictive means to achieve the interest
 26 identified.

27
 28

1 Dated: September 21, 2013

Respectfully Submitted,

3 By: /s/ Lisa J. Cisneros

5 Richard M. Heimann (State Bar No. 63607)
6 Kelly M. Dermody (State Bar No. 171716)
7 Eric B. Fastiff (State Bar No. 182260)
8 Brendan Glackin (State Bar No. 199643)
9 Dean Harvey (State Bar No. 250298)
10 Anne B. Shaver (State Bar No. 255928)
11 Lisa J. Cisneros (State Bar No. 251473)
12 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
13 275 Battery Street, 29th Floor
14 San Francisco, California 94111-3339
15 Telephone: 415.956.1000
16 Facsimile: 415.956.1008

17 Joseph R. Saveri
18 Lisa J. Lebove
19 James G. Dallal
20 SAVERI LAW FIRM, INC.
21 255 California, Suite 450
22 San Francisco, CA 94111
23 Telephone: (415) 500-6800
24 Facsimile: (415) 500-6803

25 *Co-Lead Counsel for Plaintiffs and the Proposed Class*